

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Telephone Number:

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CC:CORP:B01

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Date:

November 24, 2009

Legend

Parent =

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Third Party =

Country A =

Country B =

Country C =

Country D =

Country E =

Business A =

Business B =

a =

b =

c =

d =

e =

f =

g =

h =

Date A =

Dear :

This letter responds to your representative's letter dated September 4, 2009, requesting rulings as to the Federal income tax consequences of the Proposed Transactions (as defined below). Additional information was submitted in letters dated October 13 and November 17, 2009. The material information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in

support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transactions: (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

SUMMARY OF FACTS

Parent is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Parent Group"). Parent is engaged, through direct and indirect subsidiaries, in various businesses, including Business A and Business B.

Parent wholly owns Sub 1. Parent also owns a% of Sub 2. Third Party owns the remaining b% of Sub 2. Sub 2 owns c% of Sub 3. The remaining d% Sub 3 is owned by Third Party. Sub 3 wholly owns Sub 4, an entity that is disregarded as separate from its owner for U.S. Federal tax purposes under § 301.7701-3 (a "disregarded entity"), and Sub 5, a Country A company that is a disregarded entity. Sub 4 owns all of Sub 6, a disregarded entity, and e% of Sub 7, a Country B company that is a disregarded entity. The remaining f% of Sub 7 is owned by Sub 6.

Sub 7 wholly owns Distributing, a Country B corporation. Among its other subsidiaries, Distributing wholly owns Controlled, a Country C corporation, and Sub 8, a Country D corporation. Controlled wholly owns Sub 9, a Country A corporation. On Date A (a date within the past five years) Distributing completed its purchase of all of Controlled stock. Distributing and Controlled are each controlled foreign corporations ("CFCs") as defined in section 957.

Sub 1 wholly owns Sub 10, a disregarded entity. Sub 10 wholly owns Sub 11, a Country E company that is a disregarded entity. Sub 11 owns g% and Sub 1 owns the remaining h% of Sub 12, a disregarded entity.

Distributing and members of its separate affiliated group, as defined in section 355(b)(3)(B) (the "Distributing SAG"), conduct Business A and Business B. Following the proposed transaction, (i) the Distributing SAG will conduct Business A and (ii) Controlled and members of its separate affiliated group, as defined in section 355(b)(3)(B) (the "Controlled SAG"), will conduct Business B.

Financial information has been received indicating that each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTION

For what are represented to be valid business purposes, Distributing proposes the following steps (the "Proposed Transactions"):

- (i) Distributing will distribute its Controlled stock to Sub 7 (a disregarded entity), which will distribute such shares to Sub 4 (a disregarded entity) (the "Distribution").
- (ii) Sub 4 will sell its Controlled stock to Parent for cash and/or a note.
- (iii) Parent will contribute the Controlled stock to Sub 1 in exchange for Sub 1 stock (the "Contribution").
- (iv) Controlled will elect to become a disregarded entity (the "Election" and together with the Contribution, the "Reorganization").
- (v) Controlled will either (i) sell or contribute its assets (including all of the issued and outstanding shares in Sub 9) to Sub 12 for cash and/or a note or (ii) contribute all of its assets (including all of the issued and outstanding shares in Sub 9) to Sub 12 for additional shares in Sub 12.

REPRESENTATIONS

The following representations have been made in connection with the Distribution:

- (a) The indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing in the Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted for Business A and Business B are representative of their present operations and there have been no substantial operational changes since the date of the last financial statements submitted.

- (d) Following the Distribution, Distributing (through its SAG) and Sub 1 (as Controlled's successor) will continue the active conduct of its businesses, independently and with its separate employees.
- (e) The Distribution is being carried out for the corporate business purposes of enhanced management focus and cost savings. The Distribution is motivated, in whole or substantial part, by these corporate business purposes.
- (f) The Distribution is not used principally as a device for distributing the earnings and profits of Distributing or Controlled or both.
- (g) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (h) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (i) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons (other than persons described in § 355(e)(2)(C)) will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (j) No intercorporate debt will exist between Distributing and Controlled (or Sub 1, as Controlled's successor) at the time of, or subsequent to, the Distribution.
- (k) Payments made in connection with continuing transactions, if any, between Distributing and Controlled (or Sub 1, as Controlled's successor) will be for

fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (l) Following the Distribution, no person will hold a greater-than-50 percent interest in either Distributing or Controlled (within the meaning of § 355(g)) who did not hold such an interest immediately before the Distribution.
- (m) Distributing and Controlled each will pay its own expenses, if any, incurred in connection with the Distribution.
- (n) Controlled was not and will not be a United States real property holding corporation (as defined in § 897(c)(2)) either (i) at any time during the five-year period ending on the date of the Distribution, or (ii) immediately following the Distribution.
- (o) Distributing and Controlled are controlled foreign corporations ("CFCs") as defined in § 957 immediately before or immediately after the Distribution.
- (p) Sub 3 will be a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), with respect to Distributing and Controlled immediately before and after the Distribution.
- (q) Distributing and Controlled will not be passive foreign investment companies as defined in § 1297(a) immediately before or immediately after the Distribution.
- (r) The notice requirements of § 1.367(b)-1(c) of the Income Tax Regulations will be met with respect to the Distribution.
- (s) The Distribution will not include the transfer of stock of any corporation that has been a U.S. transferor, the transferee corporation, or the transferred corporation with respect to any unexpired "gain recognition agreement" within the meaning of §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.

The following representations have been made in connection with the Reorganization:

- (t) The fair market value of Sub 1 stock and any other consideration received by Parent will be approximately equal to the fair market value of Controlled stock surrendered in the exchange.
- (u) Sub 1 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Controlled immediately prior to the Reorganization. For purposes of this

representation, amounts paid by Controlled to dissenters, amounts paid by Controlled to shareholders who receive cash or other property, amounts used by Controlled to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Controlled immediately preceding the transfer will be included as assets of Controlled held immediately prior to the Reorganization.

- (v) After the Reorganization, Parent will be in control of Sub 1 within the meaning of § 368(a)(2)(H).
- (w) At least 40% of the proprietary interest in Controlled will be exchanged for Sub 1 stock and preserved within the meaning of § 1.368-1(e).
- (x) There is no plan or intention for Sub 1, or any person related (as defined in § 1.368-1(e)(4)) to Sub 1, to reacquire any Sub 1 stock issued in the Reorganization.
- (y) Sub 1 (through disregarded entities) has no plan or intention to sell or otherwise dispose of any of the assets of Controlled to be acquired in the Reorganization, except for dispositions made in the ordinary course of business.
- (z) The adjusted basis and fair market value of the assets of Controlled to be transferred by Controlled to Sub 1 each will equal or exceed the amount of the liabilities to be assumed by Sub 1 in the Reorganization plus the amount of the liabilities, if any, to which the transferred assets are subject.
- (aa) The liabilities of Controlled to be assumed by Sub 1 plus the liabilities, if any, to which the transferred assets are subject were incurred by Controlled in the ordinary course of business and are associated with the assets to be transferred.
- (bb) Sub 1 will continue the business of Controlled in the same manner as it was conducted by Controlled prior to the Reorganization.
- (cc) Sub 1 (through disregarded entities) will continue the business of Controlled in the same manner as it was conducted by Controlled prior to the Reorganization.
- (dd) At the time of the Reorganization, Sub 1 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Sub 1 that, if exercised or converted, would affect the acquisition or retention of control (as defined in § 368(a)(2)(H)).

- (ee) Each of the entities involved in the Reorganization will pay its own expenses, if any, incurred in connection with the proposed transaction.
- (ff) There is no intercorporate indebtedness existing between any of the entities involved in the Reorganization that was issued, acquired, or will be settled at a discount.
- (gg) None of the entities involved in the Reorganization is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (hh) The adjusted basis and fair market value of the assets of Controlled to be transferred by Controlled to Sub 1 will each equal or exceed the amount of the liabilities to be assumed by Sub 1 in the Controlled Reorganization plus the amount of the liabilities to which the assets transferred will be subject, if any.
- (ii) None of the entities involved in the Reorganization are under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (jj) The Reorganization will be consummated pursuant to a written plan of reorganization adopted by the Boards of Directors of Parent and its relevant affiliates, and each step in the Reorganization will be carried out pursuant to such plan.
- (kk) Parent has no plan or intention to sell, exchange, or otherwise dispose of any shares of Sub 1 stock to be received in the Reorganization.
- (ll) Controlled will not hold any United States real property interests within the meaning of § 897(c)(1) immediately before the Reorganization.
- (mm) The Reorganization will not include the transfer of stock of any corporation that has been a U.S. transferor, the transferee corporation, or the transferred corporation with respect to any unexpired "gain recognition agreement" within the meaning of §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows on the Distribution:

- (1) No gain or loss will be recognized by Distributing upon the distribution of Controlled stock to Sub 3 (through disregarded entities) in the Distribution (§§ 355(c)(1) and 355(e)(2)(C)).

- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Sub 3 upon the receipt of Controlled stock (through disregarded entities) in the Distribution (§ 355(a)).
- (3) The aggregate basis of Distributing stock and Controlled stock in the hands of Sub 3 immediately after the Distribution will be the same as Sub 3's aggregate basis in Distributing stock held immediately before the Distribution, allocated between Distributing and Controlled stock in the manner described in § 1.358-2 (§ 358(a), (b) and (c)).
- (4) The holding period of Controlled stock received by Sub 3 in the Distribution will include the holding period of Distributing stock with respect to which the Distribution was made, provided that Sub 3 held the Distributing stock as a capital asset on the date of the Distribution (§ 1223(1)).
- (5) Earnings and profits of Distributing, if any, will be allocated between Distributing and Controlled in accordance with §§ 312(h) and 1.312-10(b).
- (6) The transfer of the Controlled stock by Distributing will be a distribution to which §§ 1.367(b)-1(c) and 1.367(b)-5(a), -5(c) and -5(f) apply. If Sub 3's post-distribution amount (as defined in § 1.367(b)-5(e)(2)) with respect to Distributing or Controlled is less than its pre-distribution amount (as defined in § 1.367(b)-5(e)(1)) with respect to Distributing or Controlled, Sub 3's basis in such stock immediately after the Distribution must be reduced by the amount of the difference. However, Sub 3's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Sub 3 must instead include such amount in income as a deemed dividend from such corporation. If Sub 3 reduces its basis in the stock of Distributing or Controlled (or has an inclusion with respect to such stock), Sub 3 must increase its basis in the stock of the other corporation to the extent provided in § 1.367(b)-5(c)(4).

Based solely on the information submitted and the representations set forth above, we rule as follows on the Reorganization:

- (7) The Contribution and Election will be treated for Federal income tax purposes as a transfer by Controlled of substantially all of its assets to Sub 1 in exchange for Sub 1 stock and Sub 1's assumption of Controlled's liabilities, followed by Controlled's distribution of Sub 1 stock to Parent, which will qualify as a reorganization under § 368(a)(1)(D). For purposes of this ruling, "substantially all" means at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Controlled

immediately before the Reorganization. Controlled and Sub 1 each will be “a party to a reorganization” within the meaning of § 368(b).

- (8) No gain or loss will be recognized by Controlled on the transfer of substantially all of its assets to Sub 1 in exchange for Sub 1 stock and Sub 1’s assumption of Controlled’s liabilities (§§ 361(a) and 357(a)).
- (9) No gain or loss will be recognized by Sub 1 upon its receipt of the assets of Controlled in exchange for Sub 1 stock (§ 1032(a)).
- (10) No gain or loss will be recognized by Parent upon its receipt of Sub 1 stock in exchange for its Controlled stock, as described above (§ 354(a)).
- (11) The basis of each asset of Controlled acquired by Sub 1 will be the same as the basis of such asset in the hands of Controlled immediately prior to the Reorganization (§ 362(b)).
- (12) The holding period for each Controlled asset in the hands of Sub 1 will include the period during which such asset was held by Controlled (§ 1223(2)).
- (13) Following the Reorganization, Sub 1 will succeed to and take into account the items of Controlled described in § 381(c), subject to the provisions and limitations of §§ 381, 382, 383, and 384 and the regulations thereunder.
- (14) The basis of the Sub 1 stock received by Parent in the Reorganization will equal the basis of the Controlled stock surrendered by Parent in exchange therefor (§ 358(a)(1)).
- (15) The holding period of the Sub 1 stock received by Parent in the Reorganization will include the holding period of the Controlled stock surrendered in exchange therefor, provided that the Controlled stock is held as a capital asset on the date of the exchange (§ 1223(1)).
- (16) Sub 1 shall include in income as a deemed dividend the all earnings and profits amount, if any, with respect to its stock in Controlled as required by § 1.367(b)-3(b)(3).

CAVEATS

No opinion is expressed or implied about the tax treatment of the Proposed Transactions under other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to, and has made no determination

regarding: (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b); (ii) Whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see §§ 355(a)(1)(B) and 1.355-2(d)); (iii) Whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); (iv) Whether any of the proposed transactions will result in the recapture of any "dual consolidated loss" within the meaning of §§ 1.1503-2(c)(5) or 1.1503(d)-1(b)(5); (v) To the extent not otherwise ruled on above, the adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which § 367 applies; (vi) To the extent not otherwise ruled on above, any other consequences under § 367 on any internal restructuring transaction in this ruling letter; and (vii) Whether any or all of the foreign corporations involved in the transaction are passive foreign investment companies within the meaning of § 1297(a).

Finally, if it is determined that any or all of the foreign corporations are passive foreign investment companies, no opinion is expressed with respect to the application of §§ 1291 through 1298 to the Proposed Transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provisions of the Code.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

PROCEDURAL MATTERS

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the federal income tax return of each party involved in the proposed transactions for the taxable year in which the proposed transactions are completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark J. Weiss
Assistant to the Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: